Exhibit #45

<freemanjg1@oro.doe.gov> on 11/07/2001 04:55:34 PM

To: Loretta Young/EH/DOE@EH@HQMAIL
cc: HillJC@oro.doe.gov@internet@HQMAIL, CarnesNL@oro.doe.gov@internet@HQMAIL, FowlerJJ@oro.doe.gov@internet@HQMAIL, freemanjg1@oro.doe.gov@internet@HQMAIL

Subject: FW: ORO/DOE Comments on Proposed Rule - 10 C.F.R. Part 852

Loretta,

Attached are comments from attorney, Nancy Carnes from the Oak Ridge Operations Chief Counsel's Office on the 10.C.F.R. part 852 Proposed Rule.

Jill Freeman
DOE/ORO Contractor Human Resources Group
(865) 576-0662

> -----Original Message-----
> From: Carnes, Nancy L
> Sent: Friday, November 02, 2001 10:55 AM
> To: Freeman, Jill; Hill, Christopher J.
> Subject: comments on proposed rule
> Importance: High
>
> Chris and Jill,
> Attached are our comments on the physician's panel proposed rule.
>
> Thanks,
> Nancy
> <<proposed rule.wpd>>

Oak Ridge Operations/DOE Comments on Physician Panel Proposed Rule- 66Fed.Reg.46742 (Sep.7,2001)

Alternative Screening Methods- p.46745

Limitations on the applicability of state law, and the development of criteria in accordance with a more limited application of state law would have the effect of creating new federal standards to override those embodied in state worker's compensation laws. This appears to be contrary to the legislative history and intent as it is presented in the preamble to the Proposed Rule.. Determining which elements of state law to apply would probably be a lengthy process which would result in delays of implementation of the program. It raises the fundamental question of whether by agreement with a federal agency a state may pick and choose what elements of state law would apply to a state worker's compensation claim brought by a particular class of claimants. The proposal to reimburse states to make a screening determination will of course, increase the costs of the program, and also appears somewhat at odds with the Congressional intent since DOE will be paying a state to advise DOE whether to process a claim through the state worker's compensation program. The public may perceive that a state could have a vested interest in screening out applications in order to prevent precedents for its worker's compensation program as a whole. Finally, not every state may have an appropriate entity to perform such a function..

Burden of Proof- p. 46745

The "as likely as not" standard is not consistent with the burden of proof standard in state worker's compensation statutes, and would have the effect of imposing a new federal standard on state law. Such a standard would allow recovery for illnesses which could just as likely have resulted from exposures outside the workplace. Thus, the costs to the Department could be enormous, and since the Department self insures, these costs would come from program dollars. The "more likely than not" standard should be adopted. It is consistent with Congressional intent to provide assistance to workers in making state law claims without overriding state law.

Automatic Entitlement if Federal Claim is Approved- p. 46746

While it would appear at first blush that once the Department of Labor has made a favorable determination on a claim that the identical claim pending before a physician's panel should be rendered moot, there may be considerations of state law that would dictate a different result. Again, it would appear that in the absence of clear Congressional intent to override the application of state law physicians' panels should not be bound by a DOL determination.

Prepared by Nancy Carnes